

Appeal from decisions of New Mexico State Office and Colorado State Office, Bureau of Land Management, rejecting simultaneous oil and gas lease applications NM 46954 and C-33049.

Affirmed.

1. Oil and Gas Leases: Applications: Attorneys-in-Fact or Agents

Under 43 CFR 3102.2-1, a simultaneous oil and gas lease applicant may file for reference the statement of qualifications of his agent required by 43 CFR 3102.2-6 in any BLM office. Upon acceptance of the filing by BLM and assignment of a serial number, the applicant may properly reference the serial number on future oil and gas applications filed with any BLM office in lieu of resubmitting the statement.

2. Evidence: Presumptions -- Oil and Gas Leases: Applications: Filing

The presumption of regularity which supports the official acts of public officers in the discharge of their duties must, for reasons of public policy and under burden of proof analysis, be accorded priority over the presumption that documents properly mailed are duly delivered. Thus, when Government files do not indicate that a document was received, an appellant must show not merely that the document was properly transmitted, but that it was, in fact, actually received.

APPEARANCES: William J. Legg, Esq., and Sheila E. F. Hoen, Esq., for appellant; Phillip William Lear, Esq., and Douglas L. Davies, Esq., for Aliene P. Forsyth; Robert J. Uram, Esq., Office of the Solicitor, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Anglo Resources, Inc., appeals from decisions of the New Mexico State Office, Bureau of Land Management (BLM), dated January 13, 1982, and the Colorado State Office, BLM, dated March 1, 1982, rejecting simultaneous oil and gas lease applications NM 46954 and C-33049, respectively. The State Offices rejected these applications because they were signed by Joe M. Van Auken and the files contained no statement authorizing him to sign simultaneous oil and gas lease applications for Anglo Resources, Inc.

On January 27, 1982, in response to the decision of the New Mexico State Office, appellant sent to BLM copies of the documents, including the power of attorney, and cover letter, which it alleged had been sent on April 13, 1981. In a letter to appellant dated February 4, 1982, BLM explained that on January 28, 1982, it had again conducted a thorough search of the qualifications files of Hoen Exploration Co., Inc., and Anglo Resources, Inc. BLM stated that all of the documents that appellant contended it had submitted were found in the Anglo Resources, Inc., file, except the power of attorney dated September 22, 1980, appointing Joe M. Van Auken of Hoen Exploration Co., Inc., as attorney-in-fact for Anglo Resources, Inc. Since the power of attorney could not be located, BLM stated that its decision of January 13, 1982, must stand.

Appellant's oil and gas lease application NM 46954 was drawn with first priority for parcel NM 532 in a simultaneous drawing held on August 19, 1981. Appellant's oil and gas lease application C-33049 for parcel CO-173 was also drawn with first priority in a drawing held on July 14, 1981.

On appeal, appellant offers its version of the facts as an explanation regarding its alleged filing of the power of attorney for Van Auken, which assertions are set forth below. On September 22, 1982, William J. Johnson, executive vice president of Anglo Resources, Inc., executed a power of attorney appointing Van Auken as attorney-in-fact and agent for various purposes concerning Federal oil and gas leases, with the intent that this document be sent to BLM in Santa Fe, New Mexico. In the statement of reasons, the appellant states that the affidavit of Johnson "has also been filed with the Santa Fe Bureau reaffirming the fact that the subject original Power of Attorney was made with the intent of filing it in New Mexico only, to qualify Anglo Resources, Inc., in that State for purposes of federal oil and gas leasing in various states." The power of attorney was sent to Van Auken of Hoen Exploration Co., Inc. At the direction of Van Auken, this power of attorney was mailed, along with three other documents relating to appellant's corporate qualifications, to BLM's New Mexico State Office. In his affidavit, Van Auken stated that on April 13, 1981, he instructed Clara La Gayle Wilson to mail the documents, including the power of attorney, to the New Mexico State Office. These documents were mailed by Wilson with a cover letter noting the four enclosures, appellant further asserts. Wilson submitted an affidavit attesting to mailing the four documents to Jan Budzikek of BLM, with whom she had previously talked by telephone. By letter of May 6, 1981, Raul E. Martinez of BLM notified appellant that "the corporate qualifications submitted on behalf of Anglo Resources Incorporated on April 13, 1981 are satisfactory and hereby accepted." Finally, appellant asserts that since the power of attorney could not be located in the BLM

qualifications file, Johnson executed a replacement power of attorney on February 16, 1982, which was filed with BLM on February 17, 1982.

Appellant contends that if a letter properly directed is proved to have been put into the post office or delivered to the postman, it is presumed that it reached its destination at the regular time and was received by the person to whom it was addressed. Appellant asserts that this contention is strengthened by the fact that the cover letter specified four documents and that the other three documents were received. Appellant points to the corroborating statements of Van Auken, Johnson, and Wilson as evidence that the power of attorney was sent to the New Mexico State Office. Appellant acknowledges that there is a rebuttable presumption of regularity which attends the official acts of public officers in the proper discharge of their official duties, but believes that a preponderance of evidence supports a finding that the required document was timely filed.

On April 19, 1982, BLM filed a reply to appellant's statement of reasons in the appeal concerning lease NM 46954. On June 15, 1982, Aliene P. Forsyth, the second drawee in the July 14, 1981, drawing for parcel CO-173, filed an answer to appellant's statement of reasons in the appeal concerning lease C-33049. The main argument in these responses is that BLM's decisions should be affirmed because appellant has not submitted sufficient evidence to overcome the presumption that BLM never received the document naming Van Auken as attorney-in-fact. BLM specifically notes the fact that the cover letter of April 13, 1981, merely stated, "Enclosed are the necessary forms to qualify Anglo Resources, Inc." It points out that although the letter said it contained four enclosures, the enclosures were not numbered and the package the New Mexico State Office received actually contained nine documents. BLM states that nothing in the letter shows that it enclosed material to qualify Van Auken as an attorney-in-fact for Anglo Resources, Inc. Also, BLM explains that in accordance with its regular practice, the New Mexico State Office reviewed the documents it had received and sent a letter to Wilson informing her that the qualifications were acceptable. The New Mexico State Office, BLM continues, follows a practice of specifically mentioning in qualification letters whether an attorney-in-fact has been authorized to file offers. BLM notes that no such statement was included in the letter to Wilson.

In her response, Forsyth also contends that notwithstanding the rejection of Anglo Resources, Inc.'s application for failure to comply with 43 CFR 3102.2-6(a), the application for parcel CO-173 should be rejected for failure to comply with other mandatory regulations. Forsyth asserts that appellant failed to provide the names of other parties in interest as required by 43 CFR 3102.2-7(a), 1/ and used the address of Hoen Exploration Co., Inc., its alleged agent, on its application in violation of 43 CFR 3112.2-1(d).

1/ On Oct. 1, 1982, the Board received a copy of appellant's "other party in interest" statement from the Colorado State Director. In a cover memorandum, the State Director explained that at the time the document was mailed to the State Office, the office was in the process of relocating. The State Director said that the new address announced in the Federal Register was erroneous. We note that there may be a question as to whether this document was timely filed, but consideration of this issue is not necessary for the disposition of this appeal.

On August 27, 1982, appellant submitted a supplementary statement of reasons in the appeal of C-33049 in which it contends, inter alia, that a duplicate original of the missing power of attorney was filed by appellant in an earlier attempt to qualify with the Eastern States Office, BLM, no later than January 21, 1981.

In response to Forsyth's arguments regarding a violation of 43 CFR 3102.2-7(a), appellant asserts that the name of Hoen Exploration Co., Inc., which holds an interest in the application was on an attached statement and the boxes (d) through (f) were checked appropriately. Appellant states that its address for all business conducted in the mid-continent area is the address on the application. On September 17, 1982, Forsyth filed a motion to strike the supplemental statement of reasons for failure to timely file that document, and supported that motion by a memorandum filed September 23, 1982. On September 30, 1982, appellant filed a brief supporting its statement of reasons and responding to Forsyth's motion to strike.

We will first discuss the procedural matter of Forsyth's motion to strike the supplemental statement of reasons. Consideration of a supplemental statement of reasons is discretionary with the Board and not subject to the time limitation imposed by 43 CFR 4.412. In light of the Board's resolution of this case, we find that consideration of this supplemental statement of reasons is not prejudicial to Forsyth. Therefore, we deny the motion to strike appellant's supplemental statement of reasons.

[1] The main issue on appeal is whether appellant has shown by a preponderance of the evidence that the required power of attorney was filed with its corporate qualifications. 2/ We find that it has not.

Appellant attempted to comply with the disclosure requirements by filing statements for reference under 43 CFR 3102.2-1(c) which reads as follows:

(c) Filing statements for reference. A statement of the qualifications of a trust or guardianship (§ 3102.2-3), association (§ 3102.2-4), corporation (§ 3102.2-5), agent, if the duration of the authority to act is less than 2 years and is specifically set out (§ 3102.2-6) or municipality (§ 3102.2-9) may be placed on file with a Bureau of Land Management office described in § 1821.2-1 of this title. The office receiving the statement shall indicate its acceptance of the qualifications by assigning a serial number to the statement. Reference to this serial number may be made to any Bureau of Land Management office in lieu of resubmitting the statement. Such a reference shall

2/ On Feb. 26, 1982, the Department published interim final regulations which revised 43 CFR Subpart 3102 effectively eliminating the requirement to file the agent qualifications found in 43 CFR 3102.2-6. 47 FR 8544 (Feb. 26, 1982). In the absence of countervailing public policy reasons or intervening rights, this Board may apply an amended version of a regulation to a pending matter where it benefits the affected party to do so. See James E. Strong, 45 IBLA 386 (1980); Wilfred Plomis, 34 IBLA 222, 228 (1978); Henry Offe, 64 I.D. 52, 55-56 (1957). In this case, however, it is not possible to do so because of the intervening rights of the second and third priority applicants.

constitute certification that the statement complies with paragraph (b) of this section. Amendments to a statement of qualifications shall be filed promptly and the serial number shall not be used if the statement on file is not current. 3/

In his letter to Wilson dated May 6, 1981, Martinez stated that the corporate qualifications submitted on behalf of appellant were satisfactory and accepted. This would be true, however, regardless of whether the power-of-attorney was filed. Appellant did make reference to NM 43000, the serial number assigned by Martinez, on both applications in accordance with 43 CFR 3102.2-1(c), but the evidence fails to show that it filed the required power of attorney with its corporate qualifications.

[2] While appellant acknowledges that there is a rebuttable presumption of regularity which attends the official acts of public officers in the proper discharge of their official duties, appellant believes that a preponderance of the evidence supports a finding that the required document was timely filed. The evidence includes: The affidavit of Joe M. Van Auken regarding his past business practice of compliance with the regulations and his instructions to Wilson to mail the document to BLM; an affidavit from Johnson, who stated that he executed the document to be sent specifically to the Santa Fe Office; the affidavit of Wilson, who said that she mailed the document; the cover letter stating that four documents were being sent to BLM; the fact that BLM received some of the documents; and the fact that only copies of the power of attorney remain in appellant's files.

BLM offers the following evidence to support its contention that it did not receive the power of attorney. Wilson's cover letter of April 13, 1981, said "Enclosed are the necessary forms to qualify Anglo Resources, Inc.," and noted "Enc. (4)" but did not specifically delineate the enclosures. The enclosures were not numbered and the package the New Mexico State Office

3/ Although appellant does not allege compliance with 43 CFR 3102.2-6, this regulation provides alternate ways for an agent to comply with the disclosure requirement and reads as follows:

"§ 3102.2-6 Agents.

"(a) Any applicant receiving the assistance of any other person or entity which is in the business of providing assistance to participants in a Federal oil and gas leasing program shall submit with the lease offer, or the lease application if leasing is in accordance with Subpart 3112 of this title, a personally signed statement as to any understanding, or a personally signed copy of any written agreement or contract under which any service related to Federal oil and gas leasing or leases is authorized to be performed on behalf of such applicant. Such agreement or understanding might include, but is not limited to: A power of attorney; a service agreement setting forth duties and obligations; or a brokerage agreement.

"(b) Where a uniform agreement is entered into between several offerors or applicants and an agent, a single copy of the agreement and the statement of understanding may be filed with the proper office in lieu of the showing required in paragraph (a) of this section. A list setting forth the name and address of each such offeror or applicant participating under the agreement shall be filed with the proper Bureau of Land Management office not later than 15 days from each filing of offers, or applications if leasing is in accordance with Subpart 3112 of this title."

received contained nine documents. Nothing in the cover letter showed that any document was included to qualify Van Auken as an attorney-in-fact. The New Mexico State Office follows a practice of specifically mentioning in qualification letters whether an attorney-in-fact has been authorized to file offers and no such statement was included in BLM's letter of May 6, 1981, to Wilson. On January 28, 1982, the New Mexico State Office again conducted a thorough search of the qualifications files of Hoen Exploration Co., Inc., and Anglo Resources, Inc., and found all of the documents which appellant alleged it had sent except the power of attorney dated September 22, 1980.

The presumption of regularity which supports the official acts of public officers in the discharge of their duties must, for reasons of public policy and under burden of proof analysis, be accorded priority over the presumption that documents properly mailed are duly delivered. Thus, when Government files do not indicate that a document was received, an appellant must show not merely that the document was properly transmitted, but that it was, in fact, actually received. Daniel D. Wyles, 64 IBLA 339 (1982); Bernard S. Storper, 60 IBLA 67 (1981), appeal pending, Storper v. Watt, No. 82-0449 (D.C. Cir. Feb. 17, 1982). Appellant's submission does not constitute a sufficient predicate for holding that the power of attorney was properly submitted to BLM and that BLM lost it. See Harold E. Wilson, 67 IBLA 21 (1982); Metro Energy, Inc., 52 IBLA 369 (1981); Charles J. Babington, 36 IBLA 107 (1978).

Appellant asserts that a duplicate original of the missing power of attorney was filed no later than January 21, 1981, in an earlier attempt to qualify with the Eastern States Office. Appellant's applications for both parcels refer to a statement of qualifications filed previously under serial No. NM 43000. There is no reference to an Eastern States serial number. In order for appellant to avail itself of the procedure allowed by 43 CFR 3102.2-1(c), reference must be made to the appropriate serial number. See R. Hugo C. Cotter, 58 IBLA 145, 88 I.D. 870 (1981).

Because the above discussion is dispositive of this appeal, it is unnecessary to consider whether appellant has violated 43 CFR 3102.2-7(a) or 43 CFR 3112.2-1(d).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Anne Poindexter Lewis
Administrative Judge

We concur:

Will A. Irwin
Administrative Judge

James L. Burski
Administrative Judge

